[Mr. P. K Narayana Pillai.]

THE NAYAR REGULATION AMENDMENT BILL.

PRESIDENT: The next item on the agenda is the consideration of the report of the Select Committee on the Nair Regulation Amendmet Bill, which will be presented by Mr. K. Paramesvaran Pillai.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I beg to present the report of the Select Committee on the Nayar Regulation Amendment Bill and move that the same be taken up for consideration at this Council.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): I second it.

The motion was carried.

Preamble.

MR. C. SANKARA MENON (*Quilon*): I beg to move the following amendment:

Insert "hereby" between "is" and "enacted"; and substitute "follows" for "follow".

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to second that amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I beg to state that the amendments may be accepted. "As follow" in the amended Bill is a mistake for "as follows". The latter word may be inserted in the preamble.

The question that the preamble amended form part of the Bill was put and carried.

The amended preamble was added to the Bill.

Clause 1.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In Clause 1, I propose the following amendment in view of some deficiency or ambiguity in the existing provision of the Clause. As the Clause stands at present, it applies to Nayars domiciled in Travancore and to Nayar females domiciled in Travancore who have or shall have marital relations with Nayars not domiciled in Travancore and also non-Nayars whether domiciled in Travancore or not. The Clause as it stands does not apply to the case of a domiciled Travancorean Nayar marrying a Nayar female not domiciled in Travancore. The object of the amendment is to make the Clause apply to the case of a Nayar female not domiciled in Travancore being married to a domiciled Travancorean Nayar. It is in view of that that I make the amendment. The amendment itself is of an alternative nature.

Add "or males" after the word "females"; or substitute "Nayars" for "Nayar" and omit the word "females".

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Then the Clause would read "Nayar females *or males* domiciled in Travancore," in the one case, or in the other case "*Nayars* domiciled in Travancore," the expression Nayar including males and females. That is the object of the amendment. I commend it to the acceptance of the House.

MR. A. GOVINDA MENON (*Alangad cum Parur*): I beg to second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have no objection in accepting the amendment in the alternative form.

PRESIDENT: Which particular alternative would you accept?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The second alternative.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I regret I have to oppose the amendment. My friend proposes to bring, within the purview of the Regulation, cases where a domiciled Travancorean male marries a non-Travancorean Nayar lady domiciled outside Travancore. If it is only a matter of conferring rights on ladies outside Travancore and not subject to the municipal laws of Travancore, the question may not present serious difficulties. But, on the other hand, rights are created and obligations are also created, under the statute governing the marital relations of a Nayar and his wife. This Council is now asked to define the law that should govern the devolution of property of a non-Nayar Malabar lady. Under the present Bill, the husband becomes the heir to the wife's acquisitions under certain circumstances. Under the law prevailing in Malabar, the position is fundamentally different. The husband has *not* got any rights of succession. It will then be a case of a conflict of laws. It seems to me as a general principle that this Council should not pass a piece of legislation creating liabilities as against people who are neither domiciled in Travancore nor amenable to the municipal laws of the State. That is the difficulty that confronts me. It will be a case of conflict of laws, for under the common law obtaining in Malabar, a woman's self acquisition would go to her children, and in the absence of children it would go to her tarwad. Under the Bill before the House, the succession goes, as I said, to the husband. Could the Travancore Nayar husband prefer a claim to the property of his wife in Malabar? I think it is a real difficulty which I should bring to the notice of the Council and for the consideration of my friend. If both the husband and the wife were resident in Travancore and subject to the same law, the difficulties would not have arisen at all. But if the Travancore Nayar gentleman lives in Travancore and then goes and settles down with his wife outside, how are the questions to be determined? Whose personal law is to be followed? Is it the law of the husband which is controlled by the State, or is it the law of the wife which may be the law obtaining in the locality where the wife is situate? These are practical difficulties which I want this Council to take into account before finally adopting the proposal.

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[Mr. P K. Narayana Pillai.]

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I ask whether Mr. Krishna Aiyangar is aware of the fact that an exactly similar amendment was accepted with reference to the Ezhava Bill ?

RAO BAHADUR K. A KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Might be, it is natural. That does not take away the force of my argument. I would add that, merely because an amendment was accepted in an earlier session of this Council, this Council is not barred from reconsidering its position. In fact, as I submitted, it is a real difficulty involving a principle that is now staring us in the face. I am absolutely indifferent as to what the final conclusion of this Council in regard to this matter is. I only want the Council to consider seriously the implications in the amendment before it comes to a definite conclusion.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, though it was accepted in the Ezhava Bill, I think as the amendment stands it will lead to some difficulty. The clause runs as follows :

"It shall apply to all Nayars domiciled in Travancore, and to such Nayars not so domiciled and non-Nayars, whether so domiciled or not, as have, or shall have, marital relation with Nayar females domiciled in Travancore."

So far as the first portion is concerned, as it will apply to all Nayars domiciled in Travancore, it will include both males and females. Then with regard to the latter portion, even though a person may be a non-Travancorean, if he marries a domiciled Travancorean female, he is subject to this law. And a non-Nayar, if he marries a Travancorean domiciled female, is also subject to this law. If we accept the amendment, it will be that a non-Nayar female may marry a Travancorean male, which is out of the question. As the amendment stands, a non-Nayar may marry a Travancorean male or female. I do not think the Bill contemplates the marriage of a non-Nayar female by a Nayar male. The case contemplated is only the case of a Nayar female or male domiciled in Travancore. In my opinion, the clause as it stands is perfectly safe ; I do not think it will lead to complications. That is my individual view.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to the observations of my friend Mr. Krishna Aiyangar, as my friend Mr. Ramakrishna Pillai pointed out, there is the instance of the Ezhava Bill assented to by this Council. At the time of the discussion of the Ezhava Bill, this identical question was raised by me from the non-official side. Then the official side was keen that the amendment that was then proposed should go in, and it was thereupon accepted by the entire House. Then, as to the question of extra-territorial legislation raised by my friend Mr. Krishna Aiyangar, I am sorry he forgets the existing provision in the Clause itself. The existing provision relates to persons who are not domiciled in Travancore, provided such males

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marry Nayar females domiciled in Travancore. If, to that extent, extra-territorial legislation is possible, I fail to see why such extra-territorial legislation should not extend to this case also. Again, viewing the general tendency of social legislation, I may also point out that extra-territorial legislation is occasionally resorted to by various colonial legislatures. For example, in the case of bigamy, some American States prohibit and punish bigamy in their own State even if it is contracted outside. May I also point out to the Council the provisions of the Parsi Marriage Act, which invest the British Indian High Courts with certain jurisdiction with respect to the marriage of Parsis? In a case reported in 16 Bombay, 136, the marriage of two Parsis took place not in British India but outside it. The question was raised whether the British Indian Courts had jurisdiction to go into the validity or the invalidity of the marriage in question. The Bombay High Court, in answer to the question, said that, provided the parties were before the court and provided the Statute applied to their case, wheresoever the marriage might have been performed, the court had jurisdiction. Similarly, in the case of a domiciled Travancore Nayar male marrying a female outside with whom marriage is permissible under this Regulation, there cannot be any difficulty for any court to proceed with the case.

Then, with respect to the observation of my friend, Mr. Subba Aiyar, that the Clause, as it stands, is the better form of legislation and not the proposed amendment, I would only point out that the difficulty contemplated by him would not arise. The Nayar Regulation Amendment Bill does not contemplate the case of a Nayar marrying a non-Nayar female at all. My amendment clearly indicates the idea that no marriage of a non-Nayar female is contemplated.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I base my objection only upon that.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There will be no difficulty whatsoever. The word non-Nayar will stand only for non-Nayar males. If the learned mover of the Bill is for the expression "Nayars" to stand, I am quite prepared to agree, and withdraw the rest.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to ask Mr. Narayana Pillai whether, among the Parsis, there is any such difference in the law of inheritance as between the Travancore Nayar and the Malabar Nayar.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I fail to see the point in the question.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): It is for the President to disallow the question.

PRESIDENT: I have admitted the question.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If I am to answer, I have already answered.

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[Mr. M. N. Pillai.]

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I shall explain my question.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is already my answer—I fail to see the point.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I shall explain. There is the Nayar Regulation in Travancore; there is the Nayar Regulation in Cochin. But there is no Nayar Regulation in British Malabar. We see that some forms are necessary for marriage and that certain results by way of inheritance follow a valid marriage. Such things do not exist in Malabar. Suppose a Nayar female who resides in Malabar, subject to the ordinary Marumakkathayam law, marries a Nair male in Travancore. When such a case arises, supposing our courts give a decree on the basis of our statute and the British Malabar Court gives a decree on the basis of the ordinary Marumakkathayam law, will there not be a collision, and in the case of such collision, which law is to prevail?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I answer?

PRESIDENT: Yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): So far as properties situated in Travancore are concerned, the law in Travancore will prevail; and if there is any law existing in British India then that law will prevail there.

PRESIDENT: I shall put the amendment in the form in which it was accepted by the mover of the Bill and also by the mover of the motion, to the vote of the House, *i. e.*,

Substitute "Nayars" for "Nayar" omitting the word "females" in line (3) of sub-clause (2) of Clause 1.

The amendment was put to the vote and carried, 24 voting *for* and 7 *agianst.*

PRESIDENT: I now put Clause 1, as amended, for the vote of the House. I take it that the motion is accepted.

Clause 1, as amended, was added to the Bill.

Clause 2.

The following amendment was not moved:—

MR. M. N. PILLAI (*Trivandrum*): Sub-clause (7). Delete and substitute the following:—

"Karanavan means that member of the tarwad in whom the headship of the tarwad and the right of management of its affairs and of the possession of the properties thereof are vested, such person being always the senior adult male member, unless he has been removed or has surrendered his sthanam, in which case the next senior adult male member in the order of seniority becomes such person and, in the absence of any adult male member, the senior adult female member."

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : In the definition of the word "Karanavan" I make three amendments,

Sub-clause (7). First in line 1 the word "major" will have to be inserted after the word "male", and then in line 3, the first "of" will have to be dropped. In line 4, again, the word "major" will have to be added before the expression "female".

The reason of the two amendments is that while it is obligatory that a senior anandaravan should be a male adult member, and in the absence of such adult male member, an adult female member, the definition of the expression "karanavan" does not make it obligatory that he should be a major member at all. The existing Marumakkathayam law certainly says that only the major senior member of the tarwad would be the karanavan and in the absence of such major senior male member and of all adult male members, the major senior female member would be the karanavatti. That is the law at present. In view of this fact, I beg to move that the expression "major" be inserted, after the word "male" in line 1 and before the word "female" in line 4.

The second head of amendment relates to a meaningless "of" occurring in line 3. The sub-clause reads as follows:

"Karanavan" means the senior male member of the tarwad in whom the headship of the tarwad, the right of management of its affairs and of the possession of the properties thereof.....".

The word "of" occurring before the word "possession" has little sense. In such view of the matter, I submit that all the above mentioned three amendments may be accepted.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated* (*Deputy President*) : I second the motion.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I accept the first and the third amendments, *i. e.*, the addition of the word "major" before "senior male" and "senior female".

PRESIDENT: You do not accept the omission of the word "of"?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : It appears to me that the word "of" is properly placed there, for this reason—that what is vested in karanavan is the *right* of management and the right of possession of the properties. Therefore I oppose the amendment to delete the word "of". If "of" is removed, it will not be the right of possession of properties that will be vested in the karanavan, but possession merely. It is intended that the right of management and the rightof possession should both be vested in the karanavan. And I have therefore to oppose the amendment in regard to the deletion of the word "of". But I accept the other two amendments.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): May I know from Mr. Paramesvaran Pillai whether it is not necessary that a tarwad should have a karanavan? If the amendment is accepted as suggested

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[Mr. T. K. Velu Pillai.]

by Mr. Parameswaran Pillai there is a difficulty. A family may consist of only minors. In that case there will be no karanavan.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In that case, the court will be the guardian of the minors. No minor can be the karanavan of a tarwad.

PRESIDENT: Do you accept the retention of the word "of", Mr. Narayana Pillai?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No. I do not.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I agree with Mr. Parameswaran Pillai that the first and the third amendments have to be accepted, but not the second. The karanavan has a *right* to be in possession of the property, although possession as a matter of fact may be with junior members or with others. So it is *the right to possession* that is contemplated. "*To* possession" or "*of* the possession" does not make any difference, though the former will be better. I believe the word "of" is rightly placed there and need not be deleted. The first and the third amendments may be accepted.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am for omitting the word "of". Three separate ideas are combined in that sub-section. One is the headship of the tarwad, the second is the right of management, and the third, although it is expressed only as the possession, it is the actual possession of the properties. The first is a status, the second a right and the third an actuality. Moreover, the phrase "of its affairs and of the possession of the properties thereof" is so cumbrous and so ugly. And the factum of possession which is the most important thing in this connection is emphasised by omitting the word "of" because the distinction between the status of headship, the right of possession and the factum of possession has to be maintained. I am therefore for omitting the word "of".

MR. N. RAMAKRISHNA PILLAI (*Vaikam*, cum *Ettumanur*): I have no objection to accept the first and the third amendments. But I oppose the second amendment, *viz.*, the deletion of the word "of". The definition is, as will be seen, an adaptation of the existing definition in Regulation I of 1088. The idea is that the right of management and the right of possession should be vested in the karanavan. In cases where the karanavan may not be in the locality and is living far away from the tarwad it is clear that the karanavan should be entitled to the possession, though he may not be at the place in actual possession. Mr. Velu Pillai said that the insertion of the word "of" in the sub-clause would make it awkward. I do not see any awkwardness there, because, as it stands, the intention will be clear that "the right of management of its affairs and the right of possession" are also to be vested in the karanavan. But I have no objection to take away the word "the" after "of".

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know from Mr. Ramakrishna Pillai whether there is no distinction between a right to possession and actual possession?

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MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): There is a difference. It is exactly because there is a difference that the retention of the word "of" is necessary.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): I agree with my friend Mr. Parameswaran Pillai, in regard to the retention of the word "of", because our courts will create difficulty if we delete it. A karanavan is one in whom the right of management must also become vested. If the word "of" is taken away, the Clause, as it is, would mean that actual possession of properties must be vested in a man if he is to be called a karanavan. As has been pointed out by Mr. N. Ramakrishna Pillai, the karanavan of a tarwad may be an officer elsewhere. The actual possession of the properties may be with some junior members of the tarwad. If that officer comes forward and pleads before the court that he is the karanavan, this Clause will create difficulties. The court will say that the actual possession of the properties is not vested in him, and hence he is not the karanavan.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know if, in the case of the karanavan, the right to possession of tarwad properties is in law the same thing as actual possession?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): I draw some distinction between the two.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If a karanavan has a right of possession he has got actual possession in law.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): If that is so, there is no harm in retaining the Clause as it is and there is no necessity for omitting the word "of" at all. I am in favour of the other amendments proposed by Mr. P. K. Narayana Pillai.

MR. R. KRISHNA PILLAI (*Chief Secretary to Government*): I would accept amendments 1 and 3. I would, however, put the word "major" *before* the word "male" instead of *after* it.

PRESIDENT: Is that not what Mr. P. K. Narayana Pillai wants?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With the permission of those who have supported me, I have no objection to adopt that amendment.

I am sorry that, in spite of the arguments of my friends Mr. Changanachery Parameswaran Pillai and those who have supported him, I am unable to find my way to retain the word "of". If we retain the word "of", the Clause will be ridiculous. If they are very particular in retaining the word "of" and then make some further amendments in the Clause—

PRESIDENT: They do not make any further amendments.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If they do not make any further amendments, then it will be easily seen that it is ungrammatical. The Clause reads as follows:

"Karanavan means the senior male member of the tarwad in whom the headship of the tarwad, the right of management of its affairs and of the possession of the properties thereof, are vested in law, and, in the absence of such male member, the senior female member."

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[President.]

There are only two things contemplated. Headship of the tarwad and the right. Therefore there should be inserted the word "and" between "headship" and "right". That is not proposed by them. In their view of the reading of the Clause, "karanavan" means senior male member of the tarwad in whom the headship of the tarwad and the right of management of its affairs and of the possession of the properties thereof are vested. They do not propose any such thing. Then again, they are keen about right to possession and not about the right of possession. That is not the expression used there. Further questions have been raised as to in whom as a matter of fact are the properties vested. That is a question to be answered by the Legislature. Such being the case, the Legislature should clearly define in whom the possession of the properties should be vested. My friend Mr. Subba Aiyar said that the properties of the *tarwad* might be vested in the junior member.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I said possession.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If he is going to argue that as a proposition of law, I am not going to agree with him. No doubt, a karanavan may execute documents and alienate properties. In that case, the definition would lack a necessary item regarding the karanavan, that is to say, the question in whom are the properties vested in law. The possession that is meant in the Clause is the possession in law and that is virtually tantamount to right to possession. It may be that it is outstanding with various persons. But a karanavan has possession in law and as such the objection raised with respect to the second amendment seems to be absolutely untenable. When the word "of" is dropped, the whole thing would run smooth and the retention of "of" makes the sentence faulty in grammer. If my friend Mr. K. Paramesvaran Pillai still persists, I press the amendment to vote.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to know from Mr. Narayana Pillai whether that does not occur in the existing Regulation and whether it has created any complication or difficulty.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am glad to answer my friend. As my friend the Deputy President put it, because there is a provision in a previous Regulation, because we committed a mistake on a previous occasion, that is no reason why we should perpetuate the same mistake when it is found out. It is the blind following of the existing provisions that has landed us in difficulties.

PRESIDENT: I shall split up the amendments into two parts. I shall first put the first part of the amendment to the vote with the alterations as accepted by the mover, *i. e.*, that the word "major" be inserted before the word "male" and before the word "female" in lines 1 and 4.

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The amendments were carried by the House.

PRESIDENT: The next part of the amendment is that the word "of" be omitted.

The amendment was put to the vote and carried, 17 voting *for* and 12 *against*.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The next amendment is with respect to the definition of the expression "senior anandaravan" (sub-clause 9). I move that the existing difinition be deleted and the following substituted:

"*Senior anandaravan means the anandaravan who for the time being is the next in the order of succession to karanavasthanam in the tarwad*".

The existing definition runs as follows:—

"Senior anandaravan means the major male anandaravan next in age to the karanavan, and, in the absence of such anandaravan, the senior major female among the anandaravars".

Now, this definition does not take into account certain contingencies which may occur in a Malabar *tarwad*. There is the possibility of certain karanavans and karanavattis being removed from office. There is also the possibility of some of them abdicating their office. I will take the instance of a particular *tarwad* consisting of two major females and three minor male children. In such a case, the senior female adult member would be the karanavatti. And if she is removed from karanavasthanam at the instance of the next adult senior member, she would at once sink down to the level of a junior member and the second female would become the karanavatti. Suppose, after the second female member becomes karanavatti, one of the males attains majority and becomes the karanavan. In such a contingency who is the senior anandaravan? According to the definition, the deposed karanavatti would be the senior anandaravan. I am sorry I cannot agree to a provision which would recognise the deposed karanavan as senior anandaravan. The function of the senior anandaravan under the various clauses of this particular Bill creates certain presumptions. He is, as it were, the man to safeguard the interests of the *tarwad* and his junction raises the presumption that it is in the interests of the *tarwad* that a particular transaction has been entered into. Such being the case, to call a deposed karnavan a senior anandaravan would be wholly a dangerous position. In view of that fact, I would propose the amendment, which unfortunately has got one small clerical error in the matter of the omission of the expression "major". With the permission of the President, I would add that the amendment be treated as "*Senior anandaravan means the major anandaravan who for the time being is the next in the order of succession to karanavasthanam in the tarwad*". I would recommend this definition. In fact it is the senior anandaravan that has to succeed to the karanavan's office. The deposed karanavan and karanavatti may be so placed in the order of succession to karanavasthanam that they will have to be perpetually treated as junior members. So I am moving this definition as a substitute for the existing definition.

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[Mr. V. Subba Aiyar.]

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I beg to second the amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I oppose the amendment. I think the existing definition is sufficiently wide. This is not a new definition. It is in the Nayar Regulation, I of 1088. No serious inconvenience has been felt on account of it and it is now merely transcribed from that Regulation and no amendment has been made in it. Although Mr. P. K. Narayana Pillai's amendment is equally good, I do not think any change need be made in it, as it has been existing for a long time and as the same definition is found in the Ezhava Regulation also. I therefore oppose the amendment.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Mr. Parsmesvaran Pillai says that the existing definition and Mr. Narayana Pillai's definition are equally good. It is not his case that the adoption of Mr. Narayana Pillai's amendment would work any kind of harm. We have to bear in mind the fact that Mr. Narayana Pillai has clearly pointed out certain defects. We need not leave it to the courts to construe the Section at the time disputes are raised; and when the matter has been placed before us, we should accept Mr. Narayana Pillai's amendment, especially because Mr. Paramesvaran Pillai has admitted that it does not prejudice the case. In subsequent Sections of the Bill, it will be found that the association of the senior anandaravan with the karanavan is necessary for certain purposes and that the courts have to construe that section. It is better that the law is laid down explicitly. I may once more mention that Mr. Paramesvaran Pillai, the learned mover, has not said that Mr. Narayana Pillai's amendment changes the meaning. In the light of that admission, I would press the amendment for the favourable consideration of the House.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think that Mr. Narayana Pillai's amendment is only a verbal amendment. It goes to the root of the whole thing. According to him, if a karanavan is removed, he has no right to be even the senior anandaravan, but he becomes the juniormost anandaravan. I do not think that any court has gone to that extent, namely, that, if a karanavan is deposed, he ceases to hold the position of even a senior anandaravan. That being the case, I have very strong objection to accepting the amendment as it has been moved by Mr. P. K. Narayana Pillai. In the instance suggested by Mr. Narayana Pillai, the question may arise as to who is to become the senior anandaravan of a tarwad in which all the male members are minors, of whom one becomes a major. In such a case, such a minor male member becomes the karanavan as soon as he becomes a major. The woman who happens to be the karanavan ceases to be the karanavan as soon as any minor male member becomes major. It is only in the absence of minor males that a woman can become the karanavan, and that only for the

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time being. Further, in all these cases, as Mr. K. Parameswaran Pillai indicated, any slight change in the wording will make, at any rate, the courts believe that a serious change has been made and they would be rather troubled much to find out what exactly the intention of the Legislature was, since it would not be possible to read the proceedings of the Council in courts. It is the recognised principle that in similar enactments the same wording should be used and the wording in the Bill has been accepted in the Ezhava Bill. It would be the better and the safer course not to change the wording as far as possible. In view of these facts, I believe Mr. P. K. Narayana Pillai will be inclined to withdraw his amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, the learned mover observes that my definition is as good as the existing definition. I pointed out certain difficulties to which he had nothing to say. The difficulties, therefore, remain unanswered. Mr. Subba Aiyar attempted to answer a portion of it without understanding the point that I raised. I did not raise the question as to how a karanavan is to be selected in a tarwad where there are minor male members as well as female members. That I can answer easily. The question that I raised related to the position of the senior anandaravan in a family consisting of major female members one of whom happened to be deposed from karanavasthanam. It is with respect to that that I put forward an illustration. Mr. Subba Aiyar avoided that portion of the matter and found fault with my amendment. He seems to think that a karanavan deposed from karanavasthanam must be the senior anandaravan in the *tarwad*. That, practically, is the position he adopted. But, unfortunately, the existing definition itself is against that position. It says that it is the anandaravan *next in age* to the karanavan that would be the senior anandaravan. Therefore, the deposed karanavan cannot be the senior anandaravan. I only pointed out a case of a *tarwad* consisting of female members of whom the karanavatti happens to be removed from karanavasthanam. In such a case, the deposed karanavatti becoming the senior anandaraval, I said, would be unwelcome. Therefore, the existing definition itself is in favour of the view that I take, *viz.*, that a deposed karanavan must never be the senior anandaravan.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I draw the attention of Mr. P. K. Narayana Pillai to the definition of the term *anandaravan*? It is clearly stated that there could be only one karanavan and that all the members except the karanavan are anandaravars.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is true. But I speak only so far as the definition of senior anandaravan is concerned. I wish to draw the attention of Mr. Subba Aiyar to the existing definition which says "*next in age to the karanavan*". I am only at the definition of the senior anandaravan now. Therefore, even the existing definition recognises the impossibility of a removed karanavan being the senior anandaravan. Such being the case, my attempt to assimilate the position of a deposed karanavan to that of the

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[Mr. V. Subba Aiyar.]

juniormost member of the *tarwad* is not in correct. The Legislature itself has done that. I only wanted to avoid another contingency in which a removed karanavan becomes the senior anandaravan. It is only for that that I brought forward the amendment. Therefore, I am sorry that I cannot give way to the opposition raised.

PRESIDENT: I shall put the amendment as corrected, *i. e.*, with the word 'major' inserted before 'anandaravan'. The amendment is:—

"*Substitute the following for the definition of 'senior anandaravan' in Clause 2 (9):*

'Senior anandaravan means the major anandaravan who, for the time being, is the next in the order of succession to karanavasthanam in the tarwad'.

The amendment was put and carried, 19 voting *for* and 8 *against*.

The following amendments were not moved:—

MR. M. N. PILLAI (*Trivandrum*): Sub-clause (9). Delete and substitute the following:—

"Senior anandaravan means the major male anandaravan senior in age among the anandaravans and, in the absence of such anandaravan, the senior major female among the anandaravars."

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): Sub-clause (9). Add the following explanation:—

"Explanation.—A deposed karanavan will come under this definition."

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanam-tilla*): Sub-clause (9). Add the following proviso:—

"Provided that a karanavan removed from karanavasthanam shall be considered as a senior anandaravan in preference to the major male anandaravan next in age to the karanavan."

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Sir, my amendment is only a consequential amendment. It may be taken as part of Section 45. It is consequential upon Section 45 being deleted or not.

PRESIDENT: That may be. But do you move this or not?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): The expression 'prescribed' occurs only in Section 45. If Section 45 is accepted, of course, the definition should stand. If it is deleted, this definition should go. So it is consequential upon Section 45 being accepted or not. It may be postponed till the discussion of Section 45. I have no objection to move it even now.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It will be better to move it later on.

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PRESIDENT: Then it may stand over.

MR. M. N. PILLAI (*Trivandrum*): Sir, I move that the following be added as sub-clause (12):—

"*Separate property is properly obtained by gift, bequest, inheritance or on partition from tarwad properties and includes the property obtained on partition of tarwad properties by a female.*"

The words 'separate property' have not been defined in this Bill; but the words occur very many times in the body of the Bill. According to the existing law, property obtained by a Nayar woman on partition of *tarwad* property is still *tarwad* property. In the case of the woman, when she begets children, as that law is not specifically repealed by any provision of the Bill, the old law has to be presumed to exist even according to the present Bill. There is great difference between a male's share in partition and a female's share in partition. The male gets absolute right over such property, but the female has no such right over such property. If they get children, the property becomes vested in the children and not in them. I think that they must be made equal in this matter. Therefore, I want to define 'separate property' in such a way as to include property obtained by a Nayar woman on partition also.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I oppose the amendment, because I do not think any definition of 'separate property' is required, since the expression is itself sufficiently clear. In my humble opinion, what a woman gets on partition of *tarwad* property can be her separate property if she has no children. If, on the other hand, the expression 'separate property' is not sufficiently clear to mean that what a woman gets as her share on the partition of the *tarwad* property will not be her separate property, even then I would like to leave it there, because, even without a definition of 'property', the result will be that what a woman gets on partition of *tarwad* property would be generally the property of herself and her children to be subsequently born and not separate property. Anything further I do not wish and, therefore, I oppose this amendment and leave the expression to be understood in its natural sense.

MR. M. N. PILLAI (*Trivandrum*): I have nothing more to say by way of reply. I have said what I had to say.

PRESIDENT: Do you wish to withdraw your amendment?

MR. M. N. PILLAI (*Trivandrum*): No, I do not withdraw.

PRESIDENT: You want to press it to a division?

MR. M. N. PILLAI (*Trivandrum*): Yes.

The amendment was then put to the vote and lost, 5 voting *for* and 11 *against*.

PRESIDENT: Clause 2 can be finally incorporated in the Bill after Mr. Ramakrishna Pillai's amendment is disposed of.

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[Mr. P. K. Narayana Pillai.]

Clause 3.

The following amendment was not moved:—

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Add the following proviso also:—

"Provided that every marriage shall be registered in accordance with such rules as may be prescribed by the Government in that behalf and provided also that the Government shall have power, in prescribing such rules, to prescribe such penalties as they may deem fit for their enforcement."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): At the end of the last paragraph, I propose an amendment. As it stands, the Bill says that, in the case of marriage between parties one of whom happens to be a minor, unless it is performed with the consent of the guardian, it will be invalid. This is how the proviso now runs:—

"Provided that in conjugal unions so solemnised after the date on which Regulation I of 1088 came into force, in the case of a male who has not completed 18 years of age, or of a female who has not completed 16 years of age, such conjugal union shall not be deemed to be a valid marriage unless it took place or takes place with the consent of his or her legal guardian."

Without the consent of the legal guardian of any person who is a male and who happens to be under 18 years of age, or of a female who happens to be under 16 years of age, if any marriage takes place, it may be contended at any time after the wife has given birth to a number of children and perhaps when the husband and wife happen to be 60 and 50 years old respectively, that their conjugal union is invalid, because the marriage has not taken place with the consent of the legal guardian; and if it is proved to the satisfaction of a court of law that there has not been the consent of the legal guardian to such marriage, all the children would be offerers so far as their inheritance is concerned and they would be stamped bastards. The husband and wife will not have any rights against each other and all manner of difficulties not now contemplated would spring up from such a situation. It is also a very bad policy that such a marriage, which has been continuing for a number of years after the husband and the wife have attained 18 and 16 years of age respectively, must be invalidated simply because it has been found that there was not originally the consent of the legal guardian at the time of the marriage. Why not take the continuance of their conjugal union after the attainment of their majority as a ratification of the marriage, thereby validating the marriage? It is with that object that I propose the following addition:—

"*Or unless such conjugal union is adopted and continued after the attainment of 18 or 16 years of age, as the case may be, by the party or parties concerned.*"

Another consideration that I bring forward in respect of the amendment is that, if the marriage is adopted and continued by the parties after the attainment of 18 and 16 years of age respectively, as the case may be, such marriage should be viewed as valid. It is with that object that I

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propose the amendment and I recommend it for the acceptance of the House.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*) : I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I am not satisfied that the danger pointed out is very serious in as much as there is a strong presumption of law in the case of persons living together as husband and wife, in favour of their marital relationship. Nevertheless, I have no objection to accept the principle of this amendment, provided its wording is slightly altered. I would put it thus :—

"Unless such conjugal union is ratified by conduct after attaining 18 and 16 years of age, as the case may be, by the party or parties concerned."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : There is only the question of language surviving in that matter. My friend objects to the use of the expression 'adopted.' I purposely used it, because, after attaining 18 and 16 years of age, the parties themselves are able to give their own consent so far as the marriage is concerned. If they adopt the marriage which was entered into before the attainment of 18 and 16 years of age, as the case may be, their adoption of such a marriage after attainment of 18 or 16 years of age is the same as ratification. If my friend thinks that there is some distinct advantage in the word 'ratified—'

PRESIDENT : 'Ratified by conduct'—that is what he wants.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I would object to that. What should be the length of conduct in order that it might amount to ratification would be another question. So I would submit that 'adopted and continued' or 'accepted and continued' would do.

PRESIDENT : I would put the amendment in the form in which it has been moved.

The amendment was put and carried.

MR. C. SANKARA MENON (*Quilon*) : The first part of my amendment I do not press, in view of the fact that most of the Nayar members do not consider it necessary.

PRESIDENT : You need not give any reasons. Are you moving it or not ?

MR. C. SANKARA MENON (*Quilon*) : No, I do not move the first part *viz.*, the following :—

"Delete the proviso and add as Clause 3 (a) the following :

The age for marriage shall be 18 years complete for females and 25 years complete for males.

I move the alternative amendment *viz.*, that the following be added at the end of the proviso :—

"*Such consent shall be recorded in the form prescribed before the Registrar of Assurances within whose jurisdiction the marriage takes place within one month from the date of marriage. Parties so failing shall be liable to pay a fine of Rs. 50, and in default of payment of fine, to simple imprisonment for a term not exceeding one month.*"

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[President.]

The object of the amendment is the same as that stated by Mr. P. K. Narayana Pillai. Under the Section as it is worded at present, if the parties to a marriage were minors at the time of the marriage, there ought to be the consent of the guardian, and if there was no such consent the marriage would be absolutely void and not merely voidable. Mr. P. K. Narayana Pillai's amendment does not meet all the contingencies and difficulties that might be created by the Section. A marriage may be performed when the bride is 13 or 14 years old and she may have children when she is 15. Probably, the husband may die soon after, and the inheritance may be the point at issue. Then the consent of the guardians to the marriage might be questioned. Even the parents might have died. In such a case, it would be very difficult to prove the consent. No doubt I am aware that the existing provision has been adopted from Regulation I of 1088. Difficulties hereafter will be greater, for the children succeed to the whole of the property of the father. Therefore, there will be disputes, with regard to the inheritance, about the *factum* and the consent of the marriage. I think, therefore, that there should be some public record of consent. I do not find any practical difficulty or objection in having a record of such consent. If it is the consent of the parties to the marriage, there may be some objections to the parties going to the public office for recording their consent. But, if it is the consent of the guardian, I do not find any practical objection in recording the consent in some public office. Therefore, I move this amendment that the consent of the guardian must be recorded.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Will Mr. Sankara Menon illustrate the position? It is stated "parties so failing". By 'parties' whom does he mean, and 'failing' in doing what? Does he mean the guardians or the parties to the marriage?

MR. C. SANKARA MENON (*Quilon*): It is not the guardian only that is meant. One party may be an adult. The bridegroom may be of adult age. In such a case it refers to the adult party of the marriage also.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Failing to do what?

MR. C. SANKARA MENON (*Quilon*): Failing to record the consent.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): The act of recording the consent has to be done by the recording officer, as the amendment goes.

MR. C. SANKARA MENON (*Quilon*): It refers to the parties who are to record.

PRESIDENT: What you mean is "failing to have the consent recorded." Whether the word 'parties' applies to the guardian or to the parties to the marriage is not clear.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The amendment really, Sir, consists of two parts.

PRESIDENT: The first part has not been moved.

RAO BAHADUR K.A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The particular amendment itself consists of two parts.

PRESIDENT: The amendment has not been seconded.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I wish to second it so far as the first part is concerned, if my friend is willing to withdraw the second part.

PRESIDENT: As it stands, are you prepared to second it?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): No.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I second it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The amendmend really consists of two parts. The first part relates to the recording of the consent before the Registrar of Assurances The second part fixes a penalty for failure to discharge that duty. The first part of it seems to be necessary, because, according to the proviso, which has been already accepted by the House, no marriage between minors not assented to by their guardians is valid. The House has practically committed itself to that view.

PRESIDENT: And not ratified by the party by their conduct after the attainment of 18 or 16 years of age, as the case may be.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The ratification, if the couple live fairly long after attaining majority, would be very satisfactorily proved by their course of conduct. But supposing one of them dies before attaining the age of 18 or 16, a difficulty will arise. In such circumstances, the only way in which such a marriage could be proved to have been a valid marriage would be to prove the consent of the guardian at the time of the marriage itself. Very satisfactory record contemporaneous with the marriage or very soon after the performance of the marriage will go a very long way to settle the question conclusively much better than oral evidence. My friends may say that, in the general scheme of marriage contemplated by the Regulation, no documentary evidence is contemplated.

The consequences would be serious if a marriage should be declared invalid because the parties are not able to prove consent as a matter of fact when the guardian has assented. If there was evidence available, the law should make it obligatory on the guardian concerned to register his assent before some prescribed authority. The difficulties anticipated now will be avoided and all facilities will be available for establishing not merely the *factum* of the marriage, but the assent of the guardian which is more important. So, in that view, I am for supporting the first part. The other ought to come in as a more comprehensive section under rules framed by Government, because this is not the only offence for which penalties have to be prescribed later on.

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[Mr. T. K. Velu Pillai.]

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I fear the difficulty is not obviated by accepting the first portion alone and by rejecting the second portion of the provision. The first portion runs like this:

"Such consent shall be recorded in the form prescribed for the purpose before the Registrar of Assurances within whose jurisdiction the marriage takes place within one month from the date of marriage."

It has not been made obligatory upon the guardians to go and give their consent before the Registrar of Assurances. In the absence of the guardians going within the prescribed period and recording their consent, the only presumption that follows is that their consent has not been given. So, in order to retain the sense of it, there must be a clause making it obligatory upon the guardians to give or to record their consent within a stated time. As regards the second clause, it has to be deleted in any case.

Even after it has been made obligatory upon the guardians, if they do not go and record their consent, they cannot be punished, for they may come forward and say: "We do not intend to give consent and, therefore we did not have the consent recorded." That certainly is too much; so, I would oppose the whole of the proviso as it stands.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I oppose the amendment. The *factum* of marriage between Nayars is not more difficult to prove than marriage among other communities. Section 3 requires that the marriage of Nayars should be openly solemnised by the presentation of cloth. That can be easily proved. And when it could be proved, it is also easy to prove the consent of the guardian if, as a matter of fact, a guardian has given his consent. Without the consent of the guardian it is impossible for any young person to *openly* solemnise the marriage. My learned friend, Mr. Sankara Menon said that, in case one of the parties to a marriage died during minority the inheritance of the children might suffer because the marriage would not be valid. But there is the case of the woman dying before she attains her majority after giving birth to children. Let us also take the case of girls having no guardians. Therefore the Section is not wide enough to provide for all these cases. It is only a partial solution that my friend would propose for the benefit of those poor minors who, for some reason or other, enter into marriages without their guardians' consent.

No doubt, registration of consent before a Registrar of Assurances is one of the ways of proving consent. But as we know often, registration is not *ipso facto* a concluding proof, because there may be questions of personation, and there may be questions of undue influence or mistake. All these chances have to be reckoned with. So I fail to see how any party would be benefited by recording the consent before the Registrar of Assurances. Sir, I attach a good deal of weight to the circumstance that though Nayars were in existence on the face of the globe for hundreds and even thousands of years and although children

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have been born and have grown up well and died—and this has been going on from generation to generation—there has not been any difficulty because marriages here are not registered.

Our law is the same as that prevailing among other important communities.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I ask my friend whether a marriage under the Hindu law or Christian law once effected does not become invalid because of the minority of the party concerned and state that Regulation I of 1088 actually contemplates the declaration of these marriages as invalid ?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am aware of that certainly. My explanation is this. Even though there is no consent, when the parties were not majors at the time of the marriage and even though there was no guardian to give his consent, still by open conduct and by open ratification the marriage between minors might be validated. Therefore the question of invalidity of marriage does not arise in the light of the amendment that this Council has to accept. Moreover it is enough to prove the factum of marriage by oral evidence if the fact of the marriage is ever called into question. I am not at all in favour of stigmatising the Nayar community as regards the way in which the Nayar marriages are conducted. It is a matter of prestige and our usages do sanction this by long custom. For these reasons, I oppose the amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I object to this provision. The provision is for a kind of registration of marriages where either or both parties to a marriage are minors. This question has been more than once raised in this Council in connection with the Ezhava Bill and it has been objected to very strongly. Now, this appears to me to be a very dangerous Section if it is put into practice. If such a provision should find a place in the Bill the people in the mofussil and in far off places may be ignorant of the existence of such a provision and they may not give information to the required authority or record their consent. Supposing there are several cases in which such information is not given to the required authority and such marriages are questioned in courts of law, but no record was made that the consent of the guardian was not recorded before the proper authority, that fact will be treated as a very strong piece of evidence—in fact as an irrefutable presumption against the form of marriage itself. So it appears to me that in the present circumstance of the country such a provision will lead to very dangerous consequences.

In regard to a similar provision in the Cochin Regulation, my friend Mr. Sankara Menon himself was telling me that the rule was more honoured in the breach there than in the observance. So it appears to me that the same will be the result here also. When the factum of a marriage is questioned, the presumption in the absence of such records will be that it did not take place. It is therefore that I submit that a provision like this will lead to dangerous consequences. For these reasons, I strongly oppose the amendment.

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[President.]

MR. C. SANKARA MENON (*Quilon*) : With regard to the first portion of the amendment, I have no objection to accept the suggestion of my friend Mr. Krishna Aiyangar. It is not the question of the factum of marriage that is going to be disputed as Mr. Paramesvaran Pillai or Mr. Velu Pillai wants us to understand. But it is a question of consent which will have to be proved. Mr. Velu Pillai says that, when a marriage is celebrated openly, there ought to be a presumption of consent.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : No, I did not say that. What I said was that marriages were openly solemnised. In cases where there are guardians, their consent may easily be proved.

MR. C. SANKARA MENON (*Quilon*) : I know of several cases where there had been conflict of opinion between the karanavan and the father. The karanavan wanted to dispose of the girl to a particular man and the father wanted to dispose of her to another. Now the present Regulation makes it a duty upon the guardian to give the consent. The guardian being the father, in the absence of such consent the marriage will be absolutely void and not merely voidable. To avoid such a contingency, it seems to me that a provision such as the one I suggest will meet with the approval of the House as I do not find any practical difficulty in the working of the same. Even now, when a marriage is arranged, the guardians before the performance of the ceremony exchange letters. Now what I ask the House is only to legalise the system, so that there may be a public record for the consent of the marriage. Therefore I would press the House to accept this amendment.

PRESIDENT : What about the second part ?

MR. C. SANKARA MENON (*Quilon*) : I am in agreement with Mr. Krishna Aiyangar and I withdraw the second part.

PRESIDENT : The amendment may be split up into two parts and put to vote.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*) : I oppose the splitting of the amendment.

PRESIDENT : I can split it up and put it to the vote of the House. I am afraid that, in the circumstances of the case, I have to split up the amendment. I shall place before the House for its vote the first part of the amendment which runs as follows :—

"*Such consent shall be recorded in the form prescribed for the purpose before the Registrar of Assurances within whose jurisdiction the marriage takes place within one month from the date of marriage.*"

The amendment was lost.

PRESIDENT : Now I think the House will have no difficulty in permitting the mover to withdraw the latter portion of the amendment.

The latter portion was, by leave, withdrawn.

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MR. C. SANKARA MENON (*Quilon*): I do not move the following two amendments as they are consequential upon the previous amendment.

MR. C. SANKARA MENON (*Quilon*) : Line 8.

Insert "in accordance with the provisions of that Regulation" between "date" and "shall."

MR. C. SANKARA MENON (*Quilon*): Add the following as Clause 4 and renumber the subsequent Clauses accordingly :—

"No marriage shall be deemed void or invalid by reason of under-age of the parties to the union if consummation follows, but if the parties or any of them are not minors or is not a minor, in which case, the guardian or guardians and all those who aid and abet them shall be punished with a fine not exceeding Rs. 50 and in default of payment of fine with simple imprisonment for a period of one month ".

Clause 3, as amended, was added to the Bill.

Clause 4.

MR. C. SANKARA MENON (*Quilon*): Sir, I beg to move that the following be added at the end of Clause 4, sub-clause (i) : —

"*By either party renouncing Hinduism or becoming an outcaste* ".

Caste is a peculiar feature of Hinduism and renunciation of Hinduism entails degradation from caste, which must *ipso facto* dissolve marriage. Under the Hindu Law, conversion to another religion entails forfeiture of rights to property and that is the law in Travancore. In 4 T. L. R. 12, it has been held as follows :

"It is undoubted law that as well under the Hindu Law as under the archaic system of that law prevailing in Malabar and Travancore, degradation from caste which accompanies conversion to Christianity or Mahomedanism entails forfeiture of civil status and deprives him of his capacity to inherit. The convert is no longer regarded as a member of or coparcener of the family to which he originally belonged and his conversion operates to dissolve as far as he is concerned the tie which bound the family together".

Therefore when a Hindu becomes a convert or an outcaste the marriage is also dissolved.

MR. A. HOOGEWERF (*Nominated*): May I know whether a Hindu who becomes a member of the Brahmo Samaj ceases to be a Hindu ?

MR. C. SANKARA MENON (*Quilon*): If Brahmo Samaj is different from Hinduism he forfeits his right.

MR. A. HOOGEWERF (*Nominated*) : Does he become an outcaste ?

MR. C. SANKARA MENON (*Quilon*) : If he suffers a degradation from caste

PRESIDENT : That does not arise here. That is a separate question.

MR. C. SANKARA MENON (*Quilon*) : Therefore, on the same principle also, I say that, when a person becomes an outcaste, he loses his rights and so the marriage also must be dissolved.

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[Mr. A. Hoogewerf.]

MR. A. HOOGEWERF (*Nominated*): When does a person become an outcaste?

MR. C. SANKARA MENON (*Quilon*): When he is excommunicated by the command of His Highness the Maha Raja who is the social and the spiritual head of the society.

MR. A. HOOGEWERF (*Nominated*): I rise to a point of order. The member is bringing in His Highness' name.

PRESIDENT: That is the custom. You may recognise it or not.

MR. C. SANKARA MENON (*Quilon*): Yes, that is the custom. In Section 5, in the last line it is provided that "except where such respondent has renounced Hinduism or has embraced another religion" no compensation need be paid for a divorce. There may be such cases. There the fact of conversion or embracing another religion must necessarily dissolve the marriage.

MR. A. HOOGEWERF (*Nominated*): I wish to know whether caste is a dogma or doctrine of Hinduism.

PRESIDENT: All that does not arise.

MR. C. SANKARA MENON (*Quilon*): It must apply to outcastes. We are not legislating for civil marriages in the Nayar Bill. Therefore these things cannot be sanctioned by a Nayar Regulation for which other provisions will have to be made. Therefore I propose that my amendment be accepted.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I second it.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): I oppose the amendment. I think according to Section 4 a marriage can be dissolved without any reason for the same. It is unnecessary to add this amendment under this Section. Moreover, if the amendment is added to this section, and if one of the parties to a marriage becomes a Buddist or a Sikh or renounces Hinduism without embracing any other religion, the marriage must *ipso facto* be dissolved. Then with regard to the question of a man becoming an outcaste, I may say that the tendency at present is towards the abolition of the caste system. Among the Nayars there were certain features of caste some time ago. Now these features are being gradually obliterated. So if this amendment is introduced in the Nayar Bill and interpreted by courts, I think caste system will become permanent in the community. So I oppose the amendment.

MR. A. HOOGEWERF (*Nominated*): I also strongly oppose the motion. I think the amendment to Clause 5 is bad enough, *i. e.*, "except where such respondent has renounced Hinduism and has embraced another religion." But this, which makes him an out-caste also, takes the cake. There, only religion is penalised, but here, Mr. Sankara

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Menon has introduced the caste also, for which he was unable to give me a satisfactory answer. With regard to this amendment and the addition made by my friend Mr. Sankara Menon, I propose to speak when Mr. Panjikaran's amendment to Clause 5 comes before the Council for discussion.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): Sir, I would accept the first part of the amendment "by either party renouncing Hinduism". But the second part I do not accept. Sir, it is very difficult to define the term "outcaste" here.

PRESIDENT: Nobody would settle it here. It has got to be settled elsewhere.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): Unless it is defined, how can I support it?

PRESIDENT: It has to be established before a proper tribunal that a man or woman has become an outcaste.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): Anyhow I would not support the second part but only the first.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I rise to support the first part of the amendment. Mr. Hoogewerf in his breadth of cosmopolitan vision has objected virtually to the maintenance of caste. I certainly sympathise with him and respect his feelings as a Christian. I would also be happy to recognise the feelings of Mahomedans when they say that there should not be any caste system. But standing here, Sir, as a Hindu—

MR. A. HOOGEWERF (*Nominated*): I beg to explain. I did not speak exactly in the capacity of a Christian at all here.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I did not hear.

PRESIDENT: Mr. Hoogewerf says that he did not speak as a Christian and that he did not speak of Christianity at all.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): My meaning is this—the catholicity of a Christian will enable him to accept that view. It is a matter for praise. I suppose Mr. Hoogewerf is satisfied. Mr. Hoogewerf does not object to my praising him. I am one of those who think that the caste system, whatever its demerits, may have to be maintained unless, I think, the several communities in India are all prepared to make up their mind that they would violate the principles of caste. It has been evident, Sir, that communities are interested in seeing differences removed between themselves and others. But with all the talk and with all the agitation—and the commendable agitation I would say—we do not find even the so-called advanced Hindus being prepared to abolish caste. If any one belonging to a higher caste would go and ask for the daughter of a Pulaya, the Pulaya would say: "Alright, Tampuran, I cannot give my daughter in marriage to you, because I shall be excommunicated". At the time the Ezhava Bill was under contemplation, in spite of the fact that Eazhavas tried to do

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[Mr. T. K. Velu Pillai.]

away with the caste system, in spite of the fact that their revered *guru* is in favour of removing the evil, still we find that marriages are validated by the Ezhava Regulation only if between an Ezhava male and an Ezhava female. A Brahmin will certainly not consent to a marriage being effected between a Brahmin woman and a non-Brahmin man. So it is not a question of the higher castes alone. It is a question of all the castes in India. It may be wrong, it may have to be modified;—probably time will modify it;—but so long as all of us are to recognise facts, so long as we have to recognise them fully, the caste system will exist. Even the Christian religion is not in all cases a bulwark against caste.

MR. A. HOOGEWERF (*Nominated*): Does not the custom exist in Hinduism itself? Is it not due to environments?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, if Mr. Hoogewerf thinks that I am going into the merits of the Christian religion, he shall be disappointed. I have got the greatest respect for the religion of Lord Jesus. I shall be the last person to forget the benefits that Christianity has given to the world. I am only referring to the circumstance that even this glorious religion is not a bulwark against caste. So far as Travancoreans are concerned, the better classes of Christians observe the rules of caste practically.

PRESIDENT: You are dealing with conversion and not with the differences in the same religion.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know from Mr. Velu Pillai whether it is the fault of the Christians concerned or whether it is the fault of the religion?

PRESIDENT: We are not dealing with the differences existing among people of the same religion. We are now talking only of conversion.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): This is material because the question of caste is material. According to our practice a Nayar, who becomes a Mahomedan or a Chrisitian or anything other than a Hindu in the ordinary sense of the word, ceases to be a Hindu; so that I am referring to other religions just to show that the feelings of the Hindus with regard to the matter of caste will be respected so long as the majority of the people are prepared to respect them. If there is an agitation to remove all castes, if all are satisfied to take part in it and if the caste system is to be abolished by a magician's wand, nobody would be happier than myself. But so long as these distinctions are to be tolerated, so long as people think that in these matters they may be right, I am of opinion that a man or a woman who renounces Hinduism cannot come within the pale of the Nayar Bill because that is the law of Nayars. Our objects, our sentiments, our practices cannot be forgotten. Therefore, without fighting with any religion here, I must say that my intentions are only to point

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out that, if a person loses his caste, whether from the Hindu religion he becomes a convert to another religion or not, he ceases to come under the Nayar Regulation. Therefore, I am glad to accord my support to the first portion of Mr. Sankara Menon's amendment.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnathur*): I oppose the amendment as a whole. The amendment consists of two parts, the addition of the words "by either party renouncing Hinduism" being the first, and the addition of the words "or becoming an out-caste" being the second. Regarding the addition of the first expression, I think that there is provision in the Bill as it is. In Section 5 of the Bill it is said that if the petitioner is the husband he "shall, in all cases, offer in the petition reasonable compensation to the respondent, except where such respondent has renounced Hinduism and has embraced another religion". So, from this Section it is seen that a husband is entitled to get divorce if the wife has renounced Hinduism and embraced another religion. Now the difficulty is that Mr. Sankara Menon wants to add "by either party". Of course the Section is clear that the wife can file a petition of divorce without assigning any reason whatsoever. Even if the husband has not renounced Hinduism she can file a petition for divorce. So, both the cases have been contemplated in the Bill itself.

With regard to the second part, *viz.*, adding the expression "or becoming an outcaste" there is this difficulty. Mr. Sankara Menon said that an outcaste is one who is excommunicated under the command of His Highness the Maha Raja. That will ask us to go to the *smarta* or some such enquiry. It is only in such cases that His Highness passes commands of excommunication or something of that sort. As a matter of fact, such a custom is not very prevalent in Travancore: so that, there is some difficulty in understanding the expression "an outcaste." At least, in my case, I cannot properly understand the word "outcaste," unless we give a definition of that word also in the Bill. For these reasons, I oppose the amendment as a whole.

MR. P. K. NARAYANA PILLAI: (*Ambalapuzha*): While appreciating the sentiments underlying the amendment and the sentiments given expression to by my friend Mr. Velu Pillai, I find it extremely difficult to support the amendment. With respect to the question as to who is an outcaste, Mr. Sankara Menon gave us the test, *viz.*, that any person who is ostracised under the command of the sovereign power may be taken as an outcaste. That was tested in the case of a certain person who was excommunicated under the *imprimatur* of His Highness in connection with a *smarta* enquiry. The temple authorities said that the man could not enter the temple owing to the fact that he had become an outcaste. But he litigated in a court of law and got a decree in his favour that he was not an outcaste. So, the Sovereign in one capacity ostracised him and in another capacity said that he was not an outcaste.

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[Mr. S. Krishna Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know whether it was not on the ground that the man was not heard?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It was not on the ground that he was not heard that he was ostracised first. It was of course on that ground that the Sovereign pronounced through the courts that he was not an outcaste. So that is the position of affairs in Travancore with respect to that question. In another sister State a man was outcasted for the offence that he crossed the seas. That was during the *regime* of one Sovereign. During the subsequent Sovereign's *regime*, it was held that he was not an outcaste. So then, the test applied in this case as to who is an outcaste is an illusory test. It is practically an amorphous thing and of a nebulous variety. One cannot have any definite knowledge in such things. On that ground the latter part of the amendment certainly must go.

Coming to the former part, we are all glad that the amendment seeks to retain the hold upon Hinduism. But there are certain instances of parallel legislation in this respect. For example, I would refer to an Act of the British Indian Legislature—Native Converts Marriage Dissolution Act—Act XXI of 1866 which, says that, when two natives marry and afterwards one of them changes the religion, it is open to the other party to have continued cohabitation with the husband or the wife as the case may be. So, the remedy lies in the matter of taking the necessary steps for purposes of judicial separation. Such being the state of law elsewhere with regard to conversion to Christianity, I doubt the wisdom of our attempting to make any conversion from Hinduism the ground *ipso facto* for dissolution. There is a provision for dissolution under Section 5, for example, of the Bill, and that, I think, is quite sufficient for the purposes of the Nayar Regulation.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether conversion alone will be an invalidating circumstance according to Mr. Narayana Pillai?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): With the amendment, Section 4 would read like this:—

> A marriage may be dissolved by either party renouncing Hinduism or becoming an outcaste.

The words "may be" there are only permissive. Now, when no reasons need be assigned for dissolution of marriages and when the clause itself would only be permissive, I fail to see the necessity for this particular clause. No doubt, it may be said on the other side that "may be" has been construed as "shall be" by judicial tribunals, but I do not know whether such forms of deductions and constructions should be adopted by us. As regards the question of renunciation of Hinduism, that opens up a very wide field. Hinduism itself has not

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been sufficiently defined by anybody. It is impossible to define it. The question may arise also as to when an individual renounces Hinduism, whether it is by departure from the faith or whether by act or word or whether by one of belief or by positive disbelief in a way. On any grounds I am sorry I cannot support the amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I oppose the amendment on the short ground that the question does not arise under the Nayar Regulation at all. If dissolution of marriage is possible only under certain prescribed contingencies, the sufficiency of apostacy has to be considered. But if there is absolute freedom conferred by the Regulation on the man and on the woman after going through certain formalities, waiting for a period of six months, why should we at this stage consider the propriety of apostacy working out the forfeiture of rights or working out the forfeiture of marriage status and the privileges appertaining thereto?. It seems to me, Sir, that the whole discussion, so far as this particular Section at which we are now working is concerned, is absolutely irrelevant. I oppose the amendment in its entirety on that sole ground.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I oppose this amendment as an amendment to Clause 4 of the Regulation. Clause 4 enumerates certain events, the happening of which would *ipso facto* dissolve the marriage in law. What my learned friend Mr. Sankara Menon wants is to introduce into the Section another clause, also namely, that, by being a convert to any other religion or by becoming an outcaste, the marriage should become dissolved in law. What it means is that, as soon as one of the parties has become a convert to another religion or an outcaste, the law should immediately step in and dissolve the marriage, whatever might be the feelings, sentiments and wishes of the parties. That appears to me, Sir, to be against all principles of justice, equity, and toleration. All that we can say is that under such circumstances, it may be left to the parties to choose whether they will still remain as husband and wife or not. For that, provision is made in the succeeding Section where absolute freedom is given to both parties. In the case of a woman, of course, she can divorce a husband without any compensation whatsoever. But in the case of a husband, if he wants to obtain a divorce he has to give compensation; and so far as the question of compensation is concerned the question of conversion to some other religion has been taken into account in considering whether the divorced wife is entitled to compensation or not. So that, by Section 5 you leave it to the parties as to whether they live as husband and wife even though either may have become a convert to some other religion. I submit that is the proper thing to do and that the law should not seek to interfere in dissolving marriages entered by the parties irrespective of the wishes of the parties and perhaps even against their will.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to ask Mr. Paramesvaran Pillai how the difficulty could be obviated when the husband who is prepared to be in his own caste but marries one belonging to another caste takes his wife to live along with the members of his family.

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[Mr. V. Subba Aiyar.]

PRESIDENT: That does not arise here at all. We are speaking of conversion after marriage.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I quite see that. He has got the right of living in the house, so that he can certainly insist on making his wife live in the house. I want to ask Mr. Paramesvaran Pillai whether, in case the marriage is not dissolved, one member of the joint family who continues to be a Hindu will not be able to put the other members of the family to unpleasantness and trouble because of that provision of the law.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The marriage may be dissolved by the parties. Then with respect to the amendment as a whole—I also object to the second part of the amendment in particular, *i. e.*, that which refers to the outcaste. It appears to me that the expression is very difficult to understand and my learned friend said that outcastes might be defined as those who have been declared to be outcastes by His Highness the Maha Raja of Travancore. Now, whatever that might be, the expression is not defined in the amendment. It merely says "outcaste". With respect to the difficulty of determining whether a man is an outcaste, I would refer the Council to the paragraph in Sir Guru Das Banerjee's book "Hindu Law of Marriage" page 185. As a specimen of the law on the subject, it enumerates some of the graver offences which would make a man an outcaste.

"Killing a Brahman, drinking forbidden liquor, stealing gold from a priest, adultery with the wife of a father, natural, or spiritual, and associating with such as commit those offences, wise legislators must declare to be crimes in the highest degree":

"False boasting of a high tribe, maligant information before the king of a criminal who must suffer death, or falsely accusing a spiritual preceptor, are crimes in the second degree, and nearly equal to killing a Brahmana."

These are all said to be cases in which a man is to be declared an outcaste. There may be similar cases. The expression is very vague and for that reason also I oppose the amendment. Therefore I strongly oppose the motion as an amendment to Clause 4.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The amendment is objectionable from a practical point of view also. In the first place, Section 4 says that the dissolution of marriage will take place on any of the three grounds. The first is death of one of the parties, which is a specific point of time; The second is by mutual consent evidenced by a registered instrument. The date on which the document is registered is the date of separation also. That also is a specific point of time. The same may be said about a decree for dissolution of marriage. Now, what my friend the mover of the amendment wants is that the marriage should be dissolved when a person renounces Hinduism. When a person renounces Hinduism it is not possible to know. I do not think that in many of the religions there are registers corresponding to the baptismal registers kept in Christian churches. Such being the case,

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whether a person renounces Hinduism or not is a question of fact to be determined and it is most difficult to say at what particular time he renounced Hinduism. So that to incorporate a doubtful element in Section 4 is rather undesirable. Section 5 clearly provides that it is open to the petitioner to move for a divorce on the ground that the respondent has renounced Hinduism and in such a contingency he is relieved of the obligation of paying any compensation. That I think is a sufficient safeguard and the question whether a particular person after marriage continued to be husband or wife should not be left to depend on proof of a doubtful nature which might lead to a complicated litigation. I therefore beg to oppose the amendment.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): What is the status of the party after the conversion but before the pronouncement of the decree of dissolution by the court?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): He must at once run to the court and say: "Here is the respondent who has renounced the Hindu religion and embraced Christianity; and therefore I must separate." And for six months he must keep quiet. That is all that can be done. Just take the other aspect of the case. Supposing the amendment is accepted, what is the result? The difficulty will be for one of the parties to prove definitely *when* the other changed religion. In many cases it is difficult to say what is renunciation of Hinduism without embracing another religion at all.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Does Mr. Subba Aiyar fear that conversions will be denied?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The point of time may be denied; even conversion may be denied.

MR. C. SANKARA MENON (*Quilon*): With regard to the provision in Section 5, I am well aware of it. There is a provision for divorce without assigning any reason and in case the husband embraces a different religion he need not offer compensation. I am well aware of that Section. But under the law of the State now, the conversion entails the forfeiture of civil status of the person. I cannot understand how a marriage between a Hindu and a Non-Hindu could subsist. When the convert has lost all his civic status, I fail to see how a valid marriage can exist between him and a Hindu.

MR. A. HOOGEWERF (*Nominated*): I wish to ask Mr. Sankara Menon whether it is as it were a civil death and therefore such an event also ought to dissolve the marriage.

PRESIDENT: Mr. Hoogewerf wants to put you a question.

MR. A. HOOGEWERF (*Nominated*): I want to know what the position of the party will be if he or she renounces Hinduism and has no religion at all.

PRESIDENT: It is quite clear from the amendment. He says "renounces Hinduism". You may put any interpretation you like upon it.

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[Mr. A. Hoogewerf.]

MR. A. HOOGEWERF (*Nominated*): Without accepting any other religion?

PRESIDENT: It might mean that

MR. C. SANKARA MENON (*Quilon*): We should not forget the provision of Section 3 which only legalises marriage between "any male other than a Nayar with whom conjugal union is permitted according to recognised social custom and usage." Now, the marriage with a person who is not a Hindu certainly cannot be recognised as a marriage under the Nayar Regulation and none of the incidents of the Regulation flow from it. It is very likely that one of the parties may not go to court virtually, and probably it may also happen that children are born of the union while one is a convert and the other remains a Hindu. Under these circumstances, what the fate of the children will be—whether they are entitled to inheritance under the Nayar Regulation, and what exactly their position is—will be left undefined. Mr. Subba Aiyar's objection is only with regard to the difficulty of finding out the time when a person becomes a convert. It is just like any other matter of fact which can be proved. With regard to the marriage, there need be no public record or any such thing. I do not find any difficulty in ascertaining the time of the conversion also. On these grounds, I press the amendment.

PRESIDENT: I now put this amendment to the vote of the House.—

"Add, at the end of sub-clause 1 of Clause 4, the following."

"*By renouncing Hinduism or becoming an outcaste.*"

The amendment was put to the vote and lost.

MR. A. HOOGEWERF (*Nominated*): My amendment is to delete sub-clause 2 of Clause 4, as also to delete sub-clause 3.

PRESIDENT: That is the amendment relating to the next sub-clause?

MR. A. HOOGEWERF (*Nominated*): Yes, Sir.

PRESIDENT: You will have to move it separately.

MR. A. HOOGEWERF (*Nominated*): I just want to make a remark about it. If permitted to speak on the two amendments together,—

PRESIDENT: It cannot be done.

MR. A. HOOGEWERF (*Nominated*): I rise to put before this House not only the Christian but the practical and commonsense aspect of marriage. I know that my views may be a sort of cry in the wilderness, but I think it my duty to put them before this House. I was able to talk at some length on this very important subject on the Ezhava Bill when that measure was before this House and I had the great consolation of hearing from the Law Member that my views in regard to divorce and marriage were ideal.

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The family is the basis of society and good Government. By disrupting the family, you shake society and Government to the very foundations. The Bill before the House makes divorce easy and free. Either party can effect it by a mere petition to the courts without giving any reasons. The sacramental aspect of marriage is lacking. This renders married life a business proposition, bare of the sentiment and tender emotions which mean so much in life. A wife is not to be taken on trial. On the other hand, most people, not merely Christians, recognise the marriage state as something holy, and therefore indissoluble. Whom God has put together, let no man put asunder. They were wedded for better, for worse, for richer, for poorer, till death does them part. The Catholic and the Eastern Churches set their face against divorce. The Christian denominations which allowed divorce, even under very rigorous conditions, have begun to realise that they have made a serious mistake. In Protestant America, it is said that, out of every 100 marriages, there are 10 divorces. The obnoxious literature that often appears in newspapers speaks for itself and cannot but have a most demoralising effect on society. As some one has put it, marriage is like asking a man to go into a rose garden and pick the best as he goes along without ever going back on his steps. Marriage, no doubt, has some risks, but it greatly depends on the man and woman to adjust matters and make their married life happy. The liberty and the whims and caprices of a few people may well be sacrificed for the good of society as a whole. Further it is very desirable to use a thorny bit on Don Juans who may be inclined to run riot and anxious to change their partner in life, as they would an old shoe. The only impediment is a little payment of money in the case of a man wanting a divorce. The natural consequence is that, as stated above, he can change as often as he desires. If he has no money, there will be no change, whatever may be the reasons. A misbehaving woman can become rich because she gets money compensation every time. She drives her husband, by her conduct, to apply for divorce. So the liberty that is given and the condition lend themselves largely to abuse. And when this so-called liberty is closely analysed, it may, after all, be found to be license, pure and simple. We have not reached that stage of perfection when we can have absolute freedom in matters of such importance. There is not a single civilised race which has this degree of freedom in the matter of divorce. The ideal marriage is indissoluable. The Nayar is a caste-Hindu. What is the orthodox Hindu ideal of marriage? The tie is indissoluble, not only in this world, but in the next world also. They carried it to all its logical consequences, not even dreading *sati*. This is why it is usually said that marriages are made in heaven. These are some of my reasons for suggesting this amendment.

REV. FR. KURIAKOSE VETTIKKAPALLY (*Todupuzha* cum *Kunnatnad*): I second the amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I oppose the amendment. In doing so, I appreciate the very noble spirit which

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[President.]

underlies the amendment proposed by Mr. Hoogewerf. The result of this amendment and the other which follows would be to make divorce absolutely impossible. In Clause 4 of this Bill, sub-clauses (ii) and (iii) refer to certain cases in which divorce is possible, *i. e.* (i) by the death of either party; (ii) by mutual consent evidenced by a registered instrument; and (iii) by a formal order of dissolution as hereinafter provided.

Mr. Hoogewerf's object is to delete both these Clauses and make marriage dissoluble only by the death of either party. I would beg to submit that this is a very noble object indeed. But the question is whether the community for whom this Bill is intended is prepared to accept it. This House knows that, before Regulation I of 1088, divorce was absolutely free among the member of the community to which this Bill refers. By Regulation I of 1088, certain restrictions were placed upon divorce. In order that a party may obtain a dissolution, he or she should put in a petition to the District Munsiff and wait for six months, and if the applicant is the husband, he will also have to offer in the petition itself the amount of compensation to the wife. In this Regulation, we are attempting to make the restriction stronger than in Regulation I of 1088, in which the maximum compensation was fixed at Rs. 2,000. By this Bill we have increased the maximum of compensation from Rs. 2,000 to Rs. 5,000. This, I believe, will make it rather difficult for a husband to divorce his wife. In the circumstance in which the community is placed, I hardly think it expedient to make any further restrictions upon the freedom of divorce. For these reasons, I oppose the amendment proposed by Mr. Hoogewerf.

MR. A. HOOGEWERF (*Nominated*): Is the enhanced compensation adequate to check divorce?

PRESIDENT: Nobody is in possession of the House.

MR. A. HOOGEWERF (*Nominated*): I have nothing more to add.

PRESIDENT: Do you press your amendment to a division?

MR. A. HOOGEWERF (*Nominated*): Yes.

The amendment was put to the vote and lost.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I do not move the following amendment standing against my name:—

Sub-clause (ii) Add the following after the word "instrument" "where the parties have attained majority".

MR. A. HOOGEWERF (*Nominated*): I have nothing more to say to what I have already said.

PRESIDENT: Do you move the amendment to sub-clause (iii)?

MR. A. HOOGEWERF (*Nominated*): I move it; but I have nothing to add. The amendment runs as follows:

Delete sub-clause (iii).

PRESIDENT: The amendment is not seconded. So it falls through.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to move that the following be added at the end of the clause:

"In the case of minors who are parties to a marriage, the instrument referred to in this Section may be executed and the proceedings provided for in the next Section may be instituted on their behalf by their guardians if the interests of the minors concerned require such a correction."

Referring to Clauses 4 and 5 in the Bill, I find that the Bill does not provide for the possibility of a dissolution of marriage between persons, one or both of whom happen to be minors. According to Clause 4, of course, there is a possibility of death intervening and dissolving the marriage that may exist in the case of minors or majors. But with respect to sub-clause (ii) of Clause 4, it should be by mutual consent—by means of registered instrument. That is possible only in the case of adult members. And then sub-clause (iii) relates to a formal order of dissolution as thereinafter provided which is amplified further in Clause 5 as the proceeding to be instituted by the wife or the husband as the case may be. That also is a step which can be taken only by major members. But looking at up-to-date legislation upon the subject of marriage it is necessary that, in certain cases, if the provision for the marriages of minors is to stand, there should also be the loophole for the dissolution of such marriages on various contingencies. For example, the up-to-date doctrine prevailing in the American States may be referred to in this connection, where the States generally provide for the dissolution of marriage or the nullity of marriage on the ground of veneral disease, insanity, etc. There are also other possibilities in that connection. For example, take the case of a husband of a minor girl who happens to be sentenced for life and sent away to the gaol. In such a case there is the necessity that the minor wife should seek a dissolution of marriage and have remarriage effected. In the matter of minor girls, it is not a question which will brook delay. For, as the time goes by, the matrimonial value that may be set upon the girl may be decreasing and not increasing, and as such, those who are interested in the girl will very much desire that she remarries as early as possible and does not wait till her minority is over. But the question is whether this Bill provides for any such contingency. I say, it does not. My friend the learned mover and myself had a talk over the subject yesterday and he referred me to a particular provision in the Bill which makes the provisions of the Civil Procedure Code applicable to the proceedings under this Regulation. I am glad that he seems to be supported by the authority, at least of one court, namely the Bombay High Court, which, while interpreting a similar provision of the Parsi Marriage and Dissolution Act, says that, though there is no express provision in that particular Act, a next friend may litigate on behalf of the minor or defend as a guardian the proceedings for the dissolution of marriage. So the analogy of that Act seems to support my friend's view. But there are difficulties, and in view of the glorious uncertainties of judicial pronouncements, I would press for a clear provision in that respect.

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[President.]

There are other reasons also why I should press for it. For, referring to the Indian Divorce Act, Act IV of 1869, which also incorporates the provisions to the effect of the Civil Procedure Code, there is a distinct provision in that that the next friend or the guardian, as the case may be, may institute the proceedings or defend the proceedings on behalf of the minor party to a marriage under that Act. Since, therefore, in addition to the incorporation of the principles of the Civil Procedure Code, there is a provision in that Act, it is possible to argue that a general incorporation of the principles of the Civil Procedure Code may not be sufficient to enable the guardian or the next friend to defend or start proceedings on behalf of a minor. In view of that provision I am anxious to see that a provision is made as a *proviso* to Clause 4or 5, as the case may be.

PRESIDENT: You have not referred to the word 'instrument' appearing in your amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzhc*): I shall come to that. In case of both guardians and next friends, an instrument also may be executed.

PRESIDENT: In your amendment there is an instrument also referred to. There is only one instrument referred to in the Section and that is in sub-clause (ii). In your amendment you refer to the instrument mentioned in the Section.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): When the parties happen to be minors,—

PRESIDENT: Your amendment does not imply all that.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That portion, I am prepared to drop. That portion which relates to instrument may be dropped. The words "the instrument referred to in this Section may be executed and" maybe dropped. The rest of the amendment may remain.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I ask Mr. Narayana Pillai to tell us whether he contemplates the court exercising a discretion on the desirability of the separation in the interests of minors. Will he tell the Council who are the persons to settle it?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Wherever a minor is involved, the courts generally have a right to use their discretion in the interests of minors.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That is not an absolute right.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is an invariable condition. That is a provision of civil laws.

PRESIDENT: What Mr. Krishna Aiyangar wants to know is whether this discretion to act on behalf of minors is to be with the guardians or with the court.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): As determined by the court.

PRESIDENT: You will then have to add the words "in the opinion of the court", between "if" and "the interests".

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MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): What does Mr. Narayana Pillai say about the contingency of a major suing a minor?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is permissible if there is a guardian *ad litum*.

PRESIDENT: With that omission and that addition, you move that amendment?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I second it.

The Council rose for lunch at 2-18 P. M. and re-assembled at 3-9 P. M.

MR. C. SANKARA MENON (*Quilon*): I oppose the amendment on this ground that freedom of divorce is given only to the parties. This right is not to be vicariously exercised by the guardian. It is liable to be abused. Mr. Narayana Pillai referred to some extreme cases where necessity for divorce might arise when the parties are minors. But the right as given could be exercised not by the parties themselves but by their guardians. The parties may love each other and probably for some other reasons the guardians may apply for divorce. Therefore the provision which Mr. Narayana Pillai wants to introduce is likely to be abused. I oppose the amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I also oppose the amendment. Mr. Narayana Pillai has confined his amendment to the second part of it as it stands in the agenda paper. I think he has withdrawn the former portion.

PRESIDENT: Yes. He has withdrawn the portion: "the instrument referred to in this Section may be executed and".

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): He has confined his amendment to the provisions for divorce. In those cases what he wants is that the guardians should be in a position to put in a petition on behalf of the minors. In that case I would submit that in the succeeding Section we have laid down the procedure to be followed in the case of such petitions before the Munsiffs' Courts. We have said that, in relation to those petitions before the Munsiffs' Courts, the Civil Procedure Code will be applicable; there is provision in that Code for dealing with petitions filed by guardians on behalf of minors. I submit that that will be quite sufficient to meet the case referred to by Mr. Narayana Pillai. I think therefore that he will withdraw his amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I am not prepared to agree with my friend—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I would like to speak if Mr. Narayana Pillai is not withdrawing.

PRESIDENT: He has already begun his reply.

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[Mr. A.Hoogewerf.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am not prepared to agree with Mr. Sankara Menon in his view about the proposed amendment. But owing to what Mr. Paramesvaran Pillai has said, as also in view of the analogous provision in Act XV of 1865 and the interpretation of the analogous ruling by the Bombay High Court in 18 Bombay, 366, I feel that the amendment proposed is superfluous, and, as such, I withdraw.

The amendment was, by leave, withdrawn.

The motion that Clause 4 form part of the Bill was put to the vote and carried.

Clause 5.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I move that the words "in Section 6 of this Regulation" be deleted. There is a slight clerical error. The word "or" after the word "Regulation" should also be omitted. I would also move for the deletion of the rest of the clause after the word "resides" in line 7 and for the substitution of the following:—

"*on any of the following grounds, viz., insanity, incurable disease, impotency, incompatibility of temperament, habitual cruelty, adultery or change of religion.*"

The object of my moving this amendment can be explained only by stating that I want monogamy and limited divorce for specific reasons and through the decree of a regular civil court. The trend of this regulation is to change the present system of marumakkathayam law and to make it almost makkathayam in point of inheritance. In a makkathayam family, it is absolutely necessary that the marital tie should be as strong as possible consistent with modern notions about dissolution and divorce. Although I am not prepared to go so far as my friend Mr. Hoogewerf about dissolution of marriage, I am certainly at one with him in thinking that it is better for the society to restrict the scope of divorce as much as possible and in doing so not to allow divorce on mere payment of compensation, but to allow it only on condition that the fact is proved in a civil court except in cases where the parties mutually agree to dissolve the marriage. I do not think that I need say much on this point because the change that is implied in this Regulation from marumakkathayam to makkathayam entails a great deal of responsibility on the parents. As such it ought to be the duty of the legislature to make such provisions as to make them live together as long as possible.

MR. M. N. PILLAI (*Trivandrum*): I second it.

MR. A. HOOGEWERF (*Nominated*): I second two items of the amendment and oppose the others. As my own amendment has been lost—of course I never expected it to win here—I would say that when habitual cruelty and adultery have been proved there might be divorce.

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But in the case of insanity and incurable disease, I would say that, although the wife may be kept apart, she must have a right to maintenance; it is not enough if she simply gets compensation. The man may take another wife, but this insane and incurable wife must also have a maintenance. In the case of the impotent husband, I do not know exactly what I should do; but in regard to incompatibility of temperament that is hardly a sufficient cause for divorce. The wife should put up with the husband's bad temper and the husband with the wife's bad temper. That is not sufficient cause for divorce.

MR. T. LAKSHMANA PILLAI (*Nominated*): Does Mr. Hoogewerf interpret the word "temperament" as equivalent to "temper"?

PRESIDENT: You may put your own construction on it.

MR. A. HOOGEWERF (*Nominated*): Temperament includes moodiness, light-heartedness, etc. You must not send away your wife on these excuses. With regard to change of religion, I have already had a few words to say and I shall have much more to say when Clause 5 comes up for consideration.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Mr. A. Govinda Menon's amendment is almost the same as that of Mr. Hoogewerf, with the exception that he permits divorce under certain circumstances. The question is whether it is expedient to provide for any and what restriction in the matter of divorces. This question was considered at great length by the Marumakkathayam Committee which sat upon this question nearly 15 or 16 years ago. This is their conclusion:

"Thus the principles of the Roman law were maintained, viz., that marriage is only a civil contract, that the relationship created by it must be regulated mainly with a view to preserve public decorum, that as the marriage union failed in its object when either of the parties showed a desire to withdraw from the alliance, it was no longer worth preserving, but that at the same time along with its dissolution an innocent party must be protected against the caprices of an unjust spouse. We are of opinion that these principles ought to govern a divorce law for the Nairs of Travancore whose marriage customs are very much like those of the Romans. "There will come a time" says Herbert Spencer, "when union by affection will be held of primary moment and the union by law as of secondary moment; whence reprobation of marital relations, in which the union by affection has dissolved."

It was their opinion that among Nairs marriage is merely a civil contract, that it was dissoluble at the will of either party and that it was not expedient to prohibit or restrict divorce in any manner except by way of compelling the husband, when he is the petitioner, to give compensation. Accordingly the law was enacted in 1088.

MR. A. HOOGEWERF (*Nominated*): I want to know whether the Regulation has been drawn up entirely on the basis of the civil contract and whether the spiritual idea inculcated by the Hindu religion finds any place in the Regulation.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I think the Bill was drafted only on the basis of the report. It was upon the report of the Marumakkathayam Committee that Regulation I of 1088 was

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[Mr. T. K. Velu Pillai]

drafted. It was the committee itself that drafted the Regulation. And it was one of the members of the committee that dealt with the Bill through the Council also. This Regulation has been in existence for the past ten years, and no reason has been assigned by the learned mover of this amendment as to why that law should be changed now. He has not referred to any change in the customs, manners or opinions of the people in support of his amendment. In order that an amendment of this kind might be passed, which is radical in its nature, very good reasons should be assigned. I find no particular reasons given by Mr. Menon in support of this amendment. On the other hand, the policy which we have been pursuing is as far as possible to put restrictions upon divorce. As I have already said, in 1088, one restriction was put in by asking the husband to pay compensation up to a particular amount. Now, we have raised the amount to Rs. 5,000, which will be another restriction, and I hope the time will probably come when the Nayar community will be prepared to put further restrictions upon divorce. That time has not yet come. I therefore oppose the amendment.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I rise to support the amendment. In opposing the amendment, Mr. Paramesvaran Pillai said that the opinion of the Marumakkathayam Committee, composed as it was of esteemed gentlemen, who should know the conditions of the country, was that there was no necessity to make divorce more difficult than what they recommended. At the time the Marumakkathayam Committee gave its opinion, that opinion was sound. The committee did not want to dismember the Nayar tarwad, and a woman was a member of the tarwad. Not even partition on thavazhi lines was given to the Nayar community, although the Marumakkathayam Committee was good enough to recommend thavazhi partition. But, during the last ten years, the condition of society has changed. There are in the Bill proposals for individual partition, and there is an articulate cry asking for Makkathayam. The poor woman who comes out of the family and then desires to return to it will be in jeopardy, because once she gets her portion of the tarwad property whether of her own accord or with the active support or counsel of her husband she will indeed be unhappy when she is told by her sisters and uncles to walk out as she has taken away all her property. To my mind, the proposal for giving the right to claim individual partition to the members of the tarwad—males and females—has put the case on a different footing altogether and therefore I say that Mr. Hoogewerf's amendment is a wise one because he wants to make divorce as difficult as possible, —I mean Mr. Govinda Menon's—and Mr. Hoogewerf's amendment too wants to make divorce as difficult as possible. It is only when a woman becomes a lunatic or when her temper is so bad or when she is suffering from some incurable disease that divorce may be thought of although some people may like to indulge in a kind of butterfly-like passion. It is in this case that a woman wants the support and company of her husband because she has lost all community of interest in her family.

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MR. A. HOOGEWERF (*Nominated*): Can she not go to her father's house?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): She cannot go to the tarwad. Mr. Hoogewerf's question is due to a misapprehension. He thinks that I am going against the amendment, while as a matter of fact I am supporting him. (*Laughter.*)

PRESIDENT: He has put the question out of curiosity.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I the question is legitimate, I will answer him. If the woman goes to the parent's house, the parents may not be in existence. Moreover, once she has claimed a share and walked out, nobody will be willing to take her back. I really fail to see why, if the demand for Makkathayam is so very great in the country, there should be any difficulty in supporting the amendment that has been moved with great brevity by Mr. Govinda Menon and supported with great vigour by Mr. Hoogewerf. We have to look the question in the face. You want to follow Christians and Brahmins so far as makkathayam is concerned. But Christians and Brahmins do not want to send away their wives whenever they like. I really fail to see how you can select what you want and reject the things you do not want from makkathayam. I have heard of individualism and the right of every person to do what he or she likes. The progress of the world shows that people are against it. The evils of individualism are being recognised in various countries so much so that it stands discredited. If everybody is allowed to do what he or she likes and when so many evils come to us in its wake, the argument that because we want to be in line with the other communities in the matter of makkathayam we should be free on the question of marriage and divorce is erroneous. Those who want Makkathayam will certainly see eye to eye with the amendment that has been moved by Mr. Govinda Menon. (*Hear, hear.*)

MR. A. GOVINDA MENON (*Alangad cum Parur*): Mr. Paramesvaran Pillai's criticisms have been more or less answered by Mr. Velu Pillai. Of course, he says I have not made out a case for my amendment. The revolution in our sentiments and our attitude towards marumakkathayam tarwads which have been brought about during the last decade can be clearly seen by the provisions in the Bill under discussion. Except Mr. Velu Pillai's there is not a single amendment to the provision which leaves all the self-acquired and separate properties to one's wife and children alone. Such a contingency was never dreamt of when the report of the Marumakkathayam Committee was written. Under the present circumstances, this provision is absolutely necessary and it is a necessary corollary to the provision which the Bill, as it is, provides as regards partition of the marumakkathayam tarwads.

PRESIDENT: I will now put the amendment to the vote.

The amendment runs as follows:—

In lines 1 and 2 delete the words "in section 6 of this Regulation or".

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[Mr. M. R. Madhava Variar.]

Delete the rest of the clause after the words "resides" in line 7 and substitute the following:

"on any of the following grounds, viz., insanity, incurable disease, impotency, incompatibility of temperament, habitual cruelty, adultery or change of religion."

MR. A. HOOGEWERF (*Nominated*): I support the amendment with the qualifications I have made.

PRESIDENT: You cannot qualify your vote like that.

The amendment was put to the vote, and it was found that 11 members voted *for* and 12 *against*.

Mr. A. Govinda Menon demanded a poll and it was taken with the following result:—

AYES—14.

1. Mr. A. J. Van Ross.
2. ,, K. Paramesvaran Pillai *Ag. Director of Agriculture.*
3. ,, K. George.
4. ,, T. K. Velu Pillai.
5. ,, P. T. Thomas.
6. ,, M. N. Pillai.
7. ,, G. Paramesvaran Pillai.
8. Mr. Joseph Panjikaran.
9. ,, V. Kunjukrishna Pillai.
10. ,, T. Lakshmana Pillai.
11. ,, L. R. Raja Raja Varma Koil Tampuran.
12. ,, A. Govinda Menon.
13. ,, T. M. Chidambaratanu Pillai.
14. ,, P. Paramesvaran.

NOES.—13.

1. Mr. K. V. Natesa Aiyar.
2. ,, M. Raja Raja Varma.
3. ,, R. Krishna Pillai.
4. ,, S. Paramesvara Aiyar.
5. ,, V. Subba Aiyar.
6. ,, A. Raja Raja Varma Koil Tampuran.
7. Mr. P. K. Narayana Pillai.
8. Mr. T. Kumara Pillai.
9. ,, N. Padmanabha Pillai.
10. ,, C. Sankara Menon.
11. ,, N. Ramakrishna Pillai.
12. ,, K. Paramesvaran Pillai (*Tiruvalla*).
13. ,, C. P. Kochukunju Pillai.

The amendment was declared carried.

The following amendments were not moved:—

MR. M. N. PILLAI (*Trivandrum*): Delete and substitute the following:—

"A husband or wife may get the marriage dissolved by decree of the court of the District Munsiff having jurisdiction, on the ground of (*a*) temperament, (*b*) habitual adultery, (*c*) desertion in bad faith, (*d*) contagious diseases, or (*e*) conversion to another religion; and, except in cases (*b*) and (*c*), if the person seeking dissolution is the husband, he shall in all cases offer in the plaint reasonable compensation to the wife."

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Lines 7 and 8. Delete the following:—

"When the petitioner is the husband, he," and substitute the words "the petitioner."

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MR. C. SANKARA MENON (*Quilon*): Lines 7 and 8. Delete the words:—

"When the petitioner is the husband he" and substitute the words "the petitioner."

MR. JOSEPH PANJIKARAN (*Shertallai*): In view of the fact that Mr. Govinda Menon's amendment has been carried, I think that the whole section—

PRESIDENT: Do you move the amendment?

MR. JOSEPH PANJIKARAN (*Shertallai*): I do not move the amendment.

The following amendments were not moved:

MR. JOSEPH PANJIKARAN (*Shertallai*): Line 9. Delete the words:—

"Except where such respondent has renounced Hinduism and has embraced another religion."

MR. C. SANKARA MENON (*Quilon*): Add the following at the end of the Clause.

"or has become an outcaste."

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): Sir, I move the following amendment:—

"Add the following proviso:—

"*Provided that the wife shall be competent to apply for divorce if she has completed 16 years of age.*"

In the proviso to Clause 3, it will be seen that a girl is given the power of giving her consent to her marriage after she completes her 16th year. It runs thus:—

"Or of a female who has not completed sixteen years of age, such conjugal union shall not be deemed to be a valid marriage unless it took place or takes place with the consent of his or her legal guardian."

Clause 5 empowers her to file a petition for the divorce of her husband between her 16th and 18th year. Clause 1 (10) defines the word 'minor' as follows:—

"Minor means a person who has not completed eighteen years of age."

So evidently, after her 18th year, if that girl wants to file a petition for divorce, she should put in the petition through the guardian as was found during the discussion of the previous amendment, because, according to the Civil Procedure Code, it is general law that the guardian alone can file a petition for divorce if the petition is presented before she is 18 years old. Now the question is reduced to this. The girl can give her consent to her marriage just after she completes her 16th year. But if she wants a divorce from her husband during the period between 16 and 18, the guardian is to go for filing the petition for divorce. It is awkward in another way also. When a girl gives her consent to her marriage, the guardian may not have consented to it. So it is possible that the guardian may run up to the court and file a petition to divorce the husband on her behalf. So that is not a discretion to be given to the guardian. Again, when we come to Section 11 of the Bill, it is stated:

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[MR. N. Kumaran.]

"The husband shall be the legal guardian of his minor wife and the father the legal guardian of his minor children in respect of their person and property."

So, if the girl wants to have divorce from her husband, the guardian who should go to the court and file the petition on her behalf is her husband himself. That is rather very awkward. Not only that. It is reasonable to hold that, if a girl can be allowed to give her consent to a marriage in her 16th year, or rather just after she completes her 16th year, it is only reasonable and logical to allow her to go to the court for divorce also. For these reasons, I propose that this amendment be accepted by the Council.

MR. M. K. KHADIR PILLAI (*Nominated*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have no objection in accepting the amendment. If a girl can give her consent to the marriage, it certainly stands to reason that she should be allowed to file the petition for divorce also. I have, therefore, no objection to accept the amendment.

The amendment was accepted *nem con.*

PRESIDENT: I now move that Clause 5 as amended stand part of the Bill.

The Clause as amended was put and added to the Bill.

Clause 6.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): My amendment relating to Clause 5 was carried. Therefore, there is no necessity for Clause 6. It is superfluous.

PRESIDENT: So, you move that it be deleted.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Yes.

MR. T. M. CHIDAMBARATANU PILLAI (*Kalkulam* cum *Tovala*): I second it.

The amendment was accepted and Clause 6 of the bill was deleted.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Clause 6 has been deleted. So, I do not move my amendment.

The following amendment was accordingly not moved.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Line 4 Delete the words:

"and it shall in no case exceed five thousand rupees".

PRESIDENT: The next amendment stands in the name of Mr. N. Kumaran, and he is not present.

MR. R. KRISHNA PILLAI (*Chief Secretary to Government*): The next four amendments relate to Clause 6 which has been deleted.

PRESIDENT: Yes. I take it that those amendments are not to be moved.

The following amendments were accordingly not moved:—

MR. N. KUMARAN (*Nominated*): Line 4. Delete the words "and it shall in no case exceed Rs. 5,000".

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MR. M. N. PILLAI (*Trivandrum*): Lines 3 and 4. Omit the words :—

"but without going into the grounds of the proposed dissolution".

MR. M. R. MADHAVA VARIAR (*Cherpannur* cum *Pattanamtitta*): Add the following at the end:—

"when the petitioner is the husband, and Rs. 500 when the petitioner is the wife".

MR. C. SANKARA MENON (*Quilon*): Add the following proviso to Clause 6:—

"Provided that it shall be competent to the Court to enquire whether the respondent has renounced Hinduism and has embraced any other religion or has become an outcaste if it is alleged as a ground for not offering compensation in the petition".

Clause 7.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): It is by a mistake that I sent up this amendment. Clause 7 ought to be there. So I do not move the amendment.

The following amendment was accordingly not moved :—

MR. A. GOVINDA MNEON (*Alangad* cum *Parur*).

Delete the Clause.

MR. M. N. PILLAI (*Trivandrum*): I move the following amendment to Clause 7:—

Delete and substitute the following:—

"The Proceedings in a divorce suit shall be held *in camera* and shall not be published."

Sir, if there is an open trial, much dirty linen will have to be washed in open court. We must, in the interests of public morals and safety, avoid such trial in the public.

PRESIDENT: How does your amendment form a substitution for Clause 7?

MR. M. N. PILLAI (*Trivandrum*): It may be added.

PRESIDENT: No. You have stated in your amendment "Delete and substitute the following". You want Clause 7 to be deleted and your clause substituted instead.

MR. M. N. PILLAI (*Trivandrum*): It may be added with the permission of the President.

PRESIDENT: Yes, I give you the permission.

MR. M. N. PILLAI (*Trivandrum*): I move that the following be added to Clause 7 :—

"*The proceedings in a divorce suit shall be held in camera and shall not be published*".

I think the trial should be *in camera* and private. That is all that I have to say.

MR. T. LAKSHMANA PILLAI (*Nominated*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to oppose it as it stands. It does not seem to have anything to do with Clause 7 at all. He may move it as a separate clause to be added at the end of the Chapter.

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[Mr. C. P. Kochukunju Pillai.]

PRESIDENT: It relates to the petition.

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The Clause relates to the service of summons.

Mr. M. N. PILLAI (*Trivandrum*): I have no objection to have it as a separate section.

Mr. P. K. NARAYANA PILLAI (*Ambalapuzha*): We have to renumber the Clauses on account of the deletion of Clause 6. We can add this Section also when we renumber the others.

PRESIDENT: Yes, while renumbering, it can be put in, but only as a separate clause.

Mr. A. GOVINDA MENON (*Alangad* cum *Parur*): It comes naturally under Section 8 and I have to move a similar amendment under that Section. I do not think, therefore, that there is any necessity for Mr. M. N. Pillai's amendment.

PRESIDENT: In view of that fact you may withdraw your amendment, Mr. M. N. Pillai. That is my suggestion. It is for you to decide.

Mr. M. N. PILLAI (*Trivandrum*): I withdraw the amendment.

PRESIDENT: Does the House permit Mr. M. N. Pillai to withdraw his amendment?

Mr. K. PARAMESVARAN PILLAI (*Tiruvalla*): With the President's permission, I wish to state that, in view of the amendment proposed by Mr. Govinda Menon and adopted by this Council, the procedure in regard to divorce proceedings will have to be clearly laid down, and I propose to bring up the necessary amendments on Monday, because I think the procedure laid down here will not suit the procedure contemplated by the amendment in regard to divorce, that has been proposed and carried. With the permission of the Chair I propose to make the necessary amendments on Monday.

PRESIDENT: Then, what is the objection to the amendment being withdrawn?

Mr. K. PARAMESVARAN PILLAI (*Tiruvalla*): We have no objection.

PRESIDENT: You may bring up suitable amendments on Monday.

The amendment was withdrawn with the permission of the House.

Clause 7 was added to the Bill.

Clause 8.

Mr. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): Here also some difficulty arises. It presupposes an enquiry as to the determination of the amount of compensation. It was with regard

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to that that I had sent up an amendment, and as Mr. Menon's amendment is carried, I think some more provision has to be made in regard to the matter. With the permission of the President, I wish to move the amendment afresh with suitable changes.

PRESIDENT: The mover of the Bill has obtained my permission to bring in fresh amendments which will be in accordance with the amendment already carried in the House.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): I want the mover to say what I should do with this amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The whole of Section 8 will have to be recast.

PRESIDENT: Mr. Kochukunju Pillai, are you going to move this amendment? It becomes unnecessary in view of the fact that Section 8 is to be amended.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): It does not become unnecessary.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That depends on the nature of the amendments to be made on Monday. It must be postponed pending the amendments of Mr. Paramesvaran Pillai to be made on Monday.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): The wording of my amendment should necessarily be changed.

PRESIDENT: Then all these amendments will have to be changed.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I move that we proceed to Clause 9 now and that other amendments in regard to Clause 8 stand over till Monday.

PRESIDENT: I fear that has become unavoidable.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): All these amendments will depend upon how Section 8 is to be worded, because the understanding was that the grounds for dissolution were not to be gone into by the Court.

PRESIDENT: All amendments up to amendment No. 52 will stand over.

Clause 9.

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): In view of another amendment of Mr. A. Govinda Menon on the same point, I do not move the following amendment:—

In Clause 9, line 1, add the words "or male" after the word "female".

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[President.]

MR. A. HOOGEWERF (*Nominated*): I beg to move the following amendment :—

"In Clause 9, line 1, add after the word "female" the word "or a male".

Sir, renouncing Hinduism and embracing another religion does not necessarily mean the lowering of status or excommunication according to the present notions prevalent among the majority of Nayars.

PRESIDENT: I find Mr. Madhava Variar's amendment is also the same. *i. e.,*

In line 1, Clause 9, add after the words "a subsequent marriage of" the words "a male or".

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): എനിക്കു അമെൻഡ്മെൻറുകളുടെ തർജ്ജിമ കിട്ടീട്ടില്ല. ര ര വരെ മാത്രമെ എനിക്കു കിട്ടീട്ടുള്ളൂ.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In view of Mr. Govinda Menon's amendment to Clause 5 that was carried, further Sections have to be carefully read. So I do not think the House will have very serious objection to our rising now and meeting on Monday in order to think over the matter as to what all amendments are necessary.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The question of monogamy or polygamy can be discussed now.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The ideas of restricting monogamy and polygamy have to be considered in view of the conditions regarding divorce. Mr. Vasudevar also complains that he has not been supplied with the translation of the amendments.

PRESIDENT: The complaint of Mr. Vasudevar requires to be looked into.

The House will rise now and will meet again at 11-30 A. M. on Monday.

The Council adjourned at 4-5 P. M.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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